No. 23-

In the Supreme Court of the United States

ANGELA GERMAINE SPENCER, BY AND THROUGH NEXT FRIEND AND MOTHER OF A.S., A MINOR
PETITIONER
v.
THE COUNTY OF HARRISON, TEXAS,
RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO THE U.S. COURT OF APPEALS OF THE FIFTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the indiscriminate shackling of detainees, particularly children, in nonjury proceedings violates the Due Process Clause.

RULE 14.1(B)(III) STATEMENT

This case arises from the following proceedings in the United States District Court for the Eastern District of Texas and the United States Court of Appeals for the Fifth Circuit:

A.S. by and through Spencer v. County of Harrison, Texas, 2022 WL 3096011 (E.D. Tex. June 27, 2022)

A.S. by and through Spencer v. County of Harrison, Texas, 2022 WL 3088369 (E.D. Tex. Aug. 3, 2022)

Spencer by and through A.S. v. County of Harrison, Texas, 2023 WL 5031486 (5th Cir. Aug. 7, 2023)

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PETITION FOR WRIT OF CERTIORARI

Angela Spencer, as mother and next friend of A.S., a minor, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit in this case.

OPINIONS BELOW

The opinion of the Fifth Circuit is unpublished and is reproduced in the appendix at App. 2a–8a. The order of the district court is unpublished and is reproduced at App. 10a–11a. The report and recommendation of the magistrate judge is unpublished and is reproduced at App. 13a–22a.

JURISDICTION

The Fifth Circuit issued its judgment on August 7, 2023. It denied a timely petition for rehearing on October 11, 2023. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

Section One of the Fourteenth Amendment of the United States Constitution provides:

> All persons born or naturalized in the United States, and subject to the

> jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The Fourth Amendment of the United States Constitution provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

INTRODUCTION

This Court has repeatedly recognized a presumption against shackling in the courtroom. In *Illinois v. Allen*, 397 U.S. 337, 344 (1970), the Court said that "no person should be tried while shackled and gagged except as a last resort," and in *Holbrook v. Flynn*, 475 U.S. 560, 568–69 (1986), it said that "shackling[] should be permitted only where justified by an essential state interest specific to each trial." In *Deck v. Missouri*, 544 U.S. 622 (2005), the Court held "that the Constitution forbids the use of visible shackles during the penalty phase, as it forbids their use during the guilt phase, *unless* that use is 'justified by an essential state interest' that is 'specific to the defendant on trial.'" *Id.* at 624 (quoting *Holbrook*, 475 U.S. at 568–69). This rule, the Court explained, "forms part of the Fifth and Fourteenth Amendments' due process guarantee," and has "deep roots in the common law." *Id.* at 626, 627.

The Court has also recognized that "children are different" from adults: they have "diminished culpability," "greater prospects for reform," and "are less deserving of the most severe punishments." *Miller v. Alabama*, 567 U.S. 460, 471, 481 (2012) (quoting *Graham v. Florida*, 560 U.S. 48, 68 (2010)).

Consistent with these principles, thirty-nine states have banned or limited the indiscriminate shackling of children in juvenile proceedings. Some have done so by judicial decision, others by statute or through rulemaking. *See, e.g.*, *In re R.W.S.*, 728 N.W.2d 326, 330 (N.D. 2007); N.C. Gen. Stat. § 7B-2402.1 (2010); *In re Amends. to the Fla. Rules of Juv. Proc.*, 26 So. 3d 552, 556–57 (Fla. 2009). The common thread that runs through these legal

restrictions is a recognition that "'[t]he right to remain unshackled during juvenile proceedings is consonant with the rehabilitative purposes' of the juvenile justice system." *R.W.S.*, 728 N.W.2d at 330 (quoting *State ex rel. Juvenile Department of Multnomah County v. Millican*, 906 P.2d 857, 860 (Or. Ct. App. 1995)). That is so even though juvenile proceedings typically do not involve a jury, whereas cases such as *Allen* and *Deck* arose out of jury proceedings.

The Fifth Circuit's decision in this case rejects this growing consensus. The court expressly refused to "recognize[] a juvenile's constitutional right not to be shackled without some assessment of necessity during an initial detention hearing." App. 8a. In the Fifth Circuit's view, there is no constitutional problem with automatically shackling children such as A.S., a ten-year old disabled Black child who weighed around seventy pounds at the time of his hearing. That conclusion bucks the tide of most other jurisdictions.

Further, although this case arises in the juvenile context, it also implicates a more general question: Whether indiscriminate shackling in nonjury proceedings is constitutional. Neither *Allen* nor *Deck* squarely addressed that issue since both involved jury proceedings. Although *Deck* noted, in a single sentence, that at common law the presumption against shackling did not "apply at 'the time of arraignment,' or like proceedings before the judge," 544 U.S. at 626 (quoting 4 William Blackstone, *Commentaries* *317 (1769)), that brief statement was "undoubtedly dictum," and is "contradicted by the very sources on which [this] Court relied" in *Deck*. *United*

States v. Sanchez-Gomez, 859 F.3d 649, 663 (9th Cir. 2019) (en banc).

In *Sanchez-Gomez*, the United States sought certiorari to address a split between the Ninth Circuit, which had barred indiscriminate shackling in nonjury proceedings, and the Second and Eleventh Circuits, which do not. *See* Cert. Pet. at 1 (17-312), *Sanchez-Gomez*, 584 U.S. 381 (2018). This Court ultimately vacated the Ninth Circuit's holding on jurisdictional grounds, without considering or deciding the shackling question. *United States v. Sanchez-Gomez*, 584 U.S. 381, 394 (2018). In the years since, more jurisdictions have barred indiscriminate shackling in nonjury proceedings, and the Fifth Circuit disagreed with those decisions.

This case involves indiscriminate shackling in juvenile proceedings, and the Court need not decide the more general question of shackling in nonjury proceedings to resolve this case. But the persistent split of authority on this broader question, with states like New York adopting one rule and the Second Circuit adopting a conflicting rule, spotlights a need for the Court's guidance on an important question. This case provides an opportunity to offer such guidance free of the mootness and jurisdictional concerns that were present in *Sanchez-Gomez*. The Court should grant review and hold, at a minimum, that indiscriminate shackling of children during juvenile court proceedings violates due process.

STATEMENT OF THE CASE

A. Factual background

A.S. is a disabled Black boy who has been diagnosed with Attention-Deficit Hyperactivity Disorder ("ADHD"). App. 13a. Because of his disability, he was enrolled in special education services to receive additional support for his emotional condition and behavioral issues. App. 37a.

In 2017, A.S. was ten years old and weighed around seventy pounds. App. 39a. In April of that year, staff members from the Marshall School District restrained A.S., who reacted by hitting and kicking at them. App. 3a, 13a. Twelve days later, staff members again restrained A.S., and A.S. responded by biting and scratching at them. App. 3a. Following this second incident, the Harrison County Juvenile Court ordered A.S. be taken into custody. *Id.* Soon after, police officers handcuffed A.S. and took him from his elementary school to the County's Juvenile Detention Center. App. 13a–14a, 43–44a. A.S. cooperated fully during intake. He received no "write ups" for misconduct and his behavior did not warrant disciplinary action of any kind during his time in juvenile detention. App. 4a.

Two days later, A.S. made an initial appearance before Juvenile Court Judge Joe Black. App. 13a–14a. County policy—as approved by Judge Black—required all juveniles' legs to be shackled when appearing in court. App. 4a. Neither the judge nor any officers conducted an individualized assessment of the need to restrain A.S. with leg shackles. *See id.* A.S. was shackled when he entered the courtroom and when he shuffled to his seat in the jury box alongside the other shackled juveniles. *Id.*

He remained shackled throughout his court appearance. *See id.*

At the end of A.S.'s detention hearing, the court conditionally released him to his mother. App. 5a. The school district later offered to drop the charges if A.S.'s mother removed him from the school district. App. 14a. A.S.'s mother accepted that offer. *Id.*

B. Proceedings below

A.S., acting by and through his mother Angela Spencer, filed a § 1983 action against Harrison County in federal court. App. 5a. A.S. asserted that the County's policy of indiscriminately shackling juveniles when they appear before a judge violated his rights under the Fourth Amendment and the Fourteenth Amendment's Due Process Clause. *Id.*

The County moved for summary judgment, and the magistrate judge issued a Report and Recommendation that the motion be granted. App. 18a, 22a. The magistrate judge acknowledged *Deck*'s holding that due process forbids the routine and indiscriminate use of shackles visible to the jury. App. 18a. But the judge concluded that "[i]n judicial settings without a jury, such as A.S.'s appearance before Judge Black in juvenile court, *Deck* is not applicable." *Id.*

The district court adopted the Report and Recommendation over A.S.'s objections. App. 10a–11a.

The Fifth Circuit affirmed. App. 3a. The court noted that "due process principles that are intertwined with the goals of the juvenile delinquency process" lie at the heart of A.S.'s constitutional claims. App. 6a. It also recognized that the fundamental bases for A.S.'s claims are the

"presumption of innocence in favor of the accused," *id.* (quoting *Taylor v. Kentucky*, 436 U.S. 478, 483 (1978)), and the "State's '*parens patriae* interest in preserving and promoting the welfare of the child,'" App. 6a–7a. (quoting *Schall v. Martin*, 467 U.S. 253, 263 (1984)).

On the former, the court observed that "[s]hackling undermines the presumption of innocence and the related fairness of the proceedings." App. 7a (internal quotation marks omitted). Indiscriminate shackling also "interfere[s] with a defendant's ability to participate in his own defense,' and affronts the 'dignity and decorum of judicial proceedings.'" *Id.* (quoting *United States v. Banegas*, 600 F.3d 342, 345 (5th Cir. 2010)).

As to the latter concern, the Fifth Circuit acknowledged "some opinions from some state courts that [have] analyzed juvenile detainees' rights regarding restraint at the adjudicatory stage of the juvenile delinquency process." App. 7a–8a. But those cases, the Fifth Circuit noted, were "not controlling on this court." App. 8a. Accordingly, "[a]lthough we do not diminish concerns regarding juvenile shackling," the court held that it would "not create" a "right not to be shackled without some assessment of necessity during an initial detention hearing before a juvenile judge." *Id.* On October 11, 2023, the Fifth Circuit denied a petition for rehearing. App. 24a–25a.

REASONS FOR GRANTING THE PETITION

"[I]t is laid down in our antient books" that a defendant "must be brought to the bar without irons, or any manner of shackles or bonds; unless there be evident danger of an escape." 4 William Blackstone, *Commentaries* *317 (footnote omitted). The Court has repeatedly invoked this "deeply embedded" rule, observing that "even to contemplate such a technique, much less see it, arouses a feeling that no person should be tried while shackled and gagged except as a last resort." *Allen*, 397 U.S. at 344; *Deck*, 544 U.S. at 629; *see also Holbrook*, 475 U.S. at 568–69.

In *Deck v. Missouri*, the Court (a) affirmed that the right against shackling was "a basic element of the 'due process of law' protected by the Federal Constitution," (b) extended this right to the penalty phase of a criminal trial, and (c) examined historical sources and case law to identify "three fundamental legal principles" behind its ruling. 544 U.S. at 629–32. Those principles, the Court explained, are "the presumption of innocence and the related fairness of the factfinding process," the right to "secure a meaningful defense" through the "right to counsel," and the "courtroom's formal dignity, which includes the respectful treatment of defendants, reflects the importance of the matter at issue, guilt or innocence, and the gravity with which Americans consider any deprivation of an individual's liberty through criminal punishment." *Id.* at 630–32. These fundamental principles, which have deep roots in the common law, apply with equal force to all court proceedings—whether adult or juvenile, before a jury or a judge.

I. THE FIFTH CIRCUIT'S DECISION CREATES A DIVISION OF AUTHORITY ON THE INDISCRIMINATE SHACKLING OF JUVENILES.

A. Numerous jurisdictions have barred the indiscriminate shackling of children.

Drawing on this Court's reasoning in *Allen*, *Holbrook*, and *Deck*, courts have applied a presumption against juvenile shackling even though such proceedings typically occur only before a judge rather than a jury.

In *In re Staley*, 364 N.E.2d 72, 73 (Ill. 1977), for instance, the Illinois Supreme Court determined that a trial court erred when it a required a fifteen-year-old "to appear at [an] adjudicatory hearing wearing handcuffs." The court held that shackling an accused person, juvenile or adult, "should be avoided" because "it tends to prejudice the jury," "restricts [the detainee's] ability to assist his counsel," and "offends the dignity of the judicial process"—echoing the same factors later laid out in *Deck*. *Id.* (quoting *People v. Boose*, 362 N.E.2d 303, 305 (Ill. 1977)). Although the State pointed out that "there was no trial by jury here," given it was a juvenile proceeding, the court held that "[t]he reasons for forbidding shackling are not limited to trials by jury." *Id.* Shackling in any situation "jeopardizes the presumption [of innocence's] value and protection and demeans our justice for an accused." *Id.*

The North Dakota Supreme Court reached the same conclusion in *In re R.W.S.*, 728 N.W.2d 326 (N.D. 2007). The court held that a judge had violated the defendant's due process rights when it "made no findings that" the defendant "posed an immediate and serious risk of

dangerous or disruptive behavior." *Id.* at 331. The North Dakota court, like the Illinois court, "recognize[d] [that] the concerns about the effect of visible physical restraints on a jury do not apply" in a "juvenile court proceeding." *Id.* at 330. Nevertheless, it applied the presumption against shackling, citing both the "'rehabilitative purposes' of the juvenile justice system" and the need for "respect for the judicial process." *Id.* (quoting *State ex rel. Juvenile Department of Multnomah County v. Millican*, 906 P.2d 857, 860 (Or. Ct. App. 1995)); *see also id.* ("[J]uveniles have the same rights as adult defendants to be free from physical restraints.").

In *People v. Fierro*, 821 P.2d 1302, 1322 (Cal. 1991), the California Supreme Court held that "shackling should not be employed at a preliminary hearing absent some showing of necessity for their use." *Fierro* relied on this Court's decision in *Illinois v. Allen*, 397 U.S. 337, 334 (1970), to conclude that shackling "is itself something of an affront to the very dignity and decorum of judicial proceedings." 821 P.2d at 1321 (quoting *Allen*, 397 U.S. at 334). The California Supreme Court, like its counterparts in Illinois and North Dakota, drew on the fundamental legal principles later set forth in *Deck*, 544 U.S. at 630–32. It held that shackling at preliminary hearings undermines the court's duty to "maintain the composure and dignity of the individual accused, and to preserve respect for the judicial system as a whole," which are "paramount values to be preserved irrespective of whether a jury is present during the proceeding." *Fierro*, 821 P.2d at 1322. Additionally, shackling can "impair the ability of the defendant to communicate effectively with counsel" and "influence witnesses at the preliminary hearing." *Id.*

Though *Fierro* addressed the broad question of indiscriminate shackling in criminal nonjury proceedings, subsequent California cases have confirmed that its broad holding applies in the specific context of juvenile shackling. *See In re DeShaun M.*, 56 Cal. Rptr. 3d 627, 629–30 (Ct. App. 2007); *Tiffany A. v. Superior Court*, 59 Cal. Rptr. 3d 363, 373 (Ct. App. 2007). As *Tiffany A.* explains, "the constitutional presumption of innocence, the right to present and participate in the defense, the interest in maintaining human dignity and the respect for the entire judicial system, are among these essentials [of due process] whether the accused is 41 or 14." *Id.* at 375. Indeed, if anything, the "rehabilitative objectives of the juvenile justice system" render indiscriminate shackling of juveniles even more problematic than adults. *Id.* "The use of shackles in a courtroom absent a case-by-case, individual showing of need creates the very tone of criminality juvenile proceedings were intended to avoid." *Id.* Other state intermediate appellate courts have also barred indiscriminate shackling in juvenile proceedings. *See State ex rel. Juvenile Department of Multnomah County v. Millican*, 906 P.2d 857, 860 (Or. Ct. App. 1995) ("[E]xtending the right to remain unshackled during juvenile proceedings is consonant with the rehabilitative purposes of Oregon's juvenile justice system."); *In re D.M.*, 139 A.3d 1073, 1082 (Md. Ct. Spec. App. 2016) (shackling poses a risk of "psychological harm, of an exacerbated sense of shame, and of distrust in the court system"); *State v. Doe*, 333 P.3d 858, 871 (Idaho Ct. App. 2014) ("[T]he use of restraints in a juvenile evidentiary hearing constitutes error unless the trial court makes a finding that the restraints are necessary . . . ."); *State v. E.J.Y.*, 55 P.3d 673, 679 (Wash. Ct. App. 2002) (error

where "the required showing on the record [on juvenile's restraints] was not made").

In addition to these judicial decisions, states have barred indiscriminate shackling of juveniles through legislation and rulemaking. *See, e.g.*, 42 Pa. Stat. and Cons. Stat. § 6336.2 (West 2023) (absent a finding of necessity, "restraints such as handcuffs, chains, shackles, irons or straitjackets shall be removed prior to the commencement of a court proceeding"); Tex. R. of Jud. Admin. R. 17(a) (2023) ("Restraints, such as handcuffs, chains, irons, and other similar items, must not be used on a child during a juvenile court proceeding unless the court determines that the use of restraints is necessary . . . .").[1] The Florida Supreme Court, in adopting such a rule, commented that "youth in Florida's courts were . . . typically shackled together in a group," with many in "leg shackles." *In re Amends. to Fla. Rules of Juv. Proc.*, 26 So. 3d 552, 556 (Fla. 2009). Such practices, the Florida Supreme Court explained, were "repugnant, degrading, humiliating, and contrary to the stated primary purposes of the juvenile justice system and to the principles of therapeutic justice." *Id.*

Adding to the growing momentum against juvenile shackling, the American Bar Association has adopted a resolution "urg[ing] all federal, state, local, territorial and tribal governments to adopt a presumption against the use of restraints on juveniles in court and to permit a court to allow such use only after providing the juvenile with an opportunity to be heard." Jim Felman & Cynthia Orr,

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[1] As discussed in Section IV below, the Texas Supreme Court's 2023 adoption of a rule that limits shackling in juvenile court does not moot the viability of A.S.'s request for damages from a 2017 incident.

Resolution & Report to the House of Delegates, 2015 ABA Sec. Crim. Just. 1.

As of this year, eleven states have not barred or limited the indiscriminate shackling of children in juvenile court. Gault Center, *Unshackle the Children: A Decade of Progress & Success* (2024), [https://perma.cc/V8F5-CUUE]; *see also id.* (noting that, in the past decade, the number of states prohibiting indiscriminate shackling has grown from thirteen to thirty-nine). Even among these remaining states, there appears to be no judicial decision expressly endorsing the practice.

B. The Fifth Circuit rejected a right against indiscriminate child shackling.

The decision below represents a stark departure from this growing consensus. And the Fifth Circuit offered little in the way of support for its decision. The court recited, but did not apply, *Deck*'s three principles. App. 7a. It referred to, but did not examine, the "fundamentally different" nature of a juvenile proceeding from an adult criminal trial. *Id.* It acknowledged "opinions from some state courts" that had ruled against indiscriminate juvenile shackling, but it ultimately held that "they lack factual application in this case" and "are not controlling on this court." App. 7a–8a. On that basis, the court refused to "recognize[] a juvenile's constitutional right not to be shackled without some assessment of necessity during an initial detention hearing." App. 8a.

In rejecting A.S.'s claims, the court split with other courts that have recognized constitutional limits on the indiscriminate shackling of juveniles. The Fifth Circuit's

refusal to recognize a fundamental constitutional right merits this Court' s review.

II. COURTS ARE SPLIT ON WHETHER *DECK* EXTENDS TO PROCEEDINGS OUTSIDE THE PRESENCE OF A JURY.

A. Several states have applied a presumption against shackling to nonjury proceedings.

Although this case concerns juvenile proceedings, it implicates a broader question: Whether *Deck*'s presumption applies to "judicial settings without a jury" or is limited to "prejudice resulting from restraints before a jury." App. 18a (emphasis omitted). Unlike juvenile shackling, where the weight of authority is opposed to indiscriminate shackling, there is a less lopsided division of authority on the general question of shackling in nonjury proceedings. The United States called attention to this split in its petition for certiorari in *Sanchez-Gomez*, noting that the en banc Ninth Circuit's decision extending *Deck* to nonjury proceedings conflicted with decisions of the Second and Eleventh Circuits. Cert. Pet. at 25–27 (17-312), *Sanchez-Gomez*, 584 U.S. 381 (2018).

In *Sanchez-Gomez*, the Ninth Circuit held the presumption against shackling should apply "whether the proceeding is pretrial, trial, or sentencing, with a jury or without." 859 F.3d at 661. The en banc court noted that this Court's passing statement in *Deck* that this rule "did not apply" in "proceedings before the judge," *id.* at 663 (quoting *Deck*, 544 U.S. at 626), was "undoubtedly dictum," *id.* That is so because *Deck* involved capital

sentencing before a jury rather than a nonjury hearing before a judge. The Ninth Circuit examined the historical record and concluded that "[t]he early commentators didn't draw the bright line between trial and arraignment that the *Deck* Court seemed to believe they did." *Id.* Likewise, "[e]arly American courts" applied the rule that indiscriminate shackling during arraignment or otherwise was "reversible error." *Id.* at 664 (quoting *Blair v. Commonwealth*, 188 S.W. 390, 393 (Ky. 1916)); *see also People v. Harrington*, 42 Cal. 165, 167 (1871) ("It has ever been the rule at common law that . . . when a prisoner was arraigned, or appeared at the bar of a Court to plead, he was presented without manacles or bonds, unless there was evident danger of his escape."). And the foundational principles identified in *Deck*—the presumption of innocence, the right to counsel, and the dignity and decorum of the courtroom—carry equal force in jury and nonjury proceedings alike. *Id.* at 660–62. For these reasons, the Ninth Circuit concluded that "[t]he Constitution enshrines a fundamental right to be free of unwarranted restraints." *Id.* at 666.

This Court subsequently vacated the Ninth Circuit's decision as moot without considering the constitutionality of indiscriminate shackling in nonjury proceedings. *Sanchez-Gomez*, 584 U.S. at 394. Nevertheless, other jurists have found the Ninth Circuit's reasoning to be persuasive. *See, e.g., United States v. Henderson*, 915 F.3d 1127, 1135 (7th Cir. 2019) (Hamilton, J., dissenting) ("While that decision was vacated as moot, it is persuasive on the merits . . . ."); *United States v. Yandell*, 2020 WL 5982096, *3 (E.D. Cal. Oct. 8, 2020).

More importantly, vacatur in *Sanchez-Gomez* did not resolve the split in authority, because five state supreme courts have reached substantially the same result as the Ninth Circuit. The California Supreme Court was the first state court to do so, in *Fierro*, a case pre-*Deck*. *See* Part I.A, *supra*. Following *Deck*, the highest courts of four additional states have joined agreed.

In *People v. Allen*, 856 N.E.2d 349, 352 (Ill. 2006), the Illinois Supreme Court held that the indiscriminate use of an "electronic stun belt" that was invisible to the jury violated a detainee's due process rights. In reaching that conclusion, the court drew on its earlier decision in *Staley*, which applied a rule against indiscriminate shackling to juvenile proceedings. *Id.* The Illinois court supplemented its discussion of *Staley* by examining this Court's decision in *Deck*. It concluded that *Deck*'s fundamental legal principles—"the presumption of innocence, securing a meaningful defense, and maintaining dignified proceedings—may be applied with like force" to restraints not "necessarily visible to the jury." *Id.* "Thus, even when there is no jury, any unnecessary restraint is impermissible." *Id.* at 353.

Similarly, the North Dakota Supreme Court's decision barring indiscriminate juvenile shackling indicated that the constitutional principle was not limited to juveniles. *See R.W.S.*, 728 N.W.2d at 330 ("[J]uveniles have the same rights as adult defendants to be free from physical restraints."). The Court confirmed this point in a subsequent decision invoking *R.W.S.* and *Deck* in adult commitment proceedings held before a judge. *In re Hoff*, 830 N.W.2d 608, 612 (N.D. 2013).

In *People v. Best*, 979 N.E.2d 1187, 1187–88 (N.Y. 2012), the New York Court of Appeals held "that the rule governing visible restraints in jury trials applies with equal force to nonjury trials." The highest court of New York, like those of Illinois and North Dakota, looked to *Deck*'s fundamental principles and concluded that "routine and unexplained use of visible restraints does violence to each of these principles" regardless of whether "the factfinder is the trial judge rather than a jury." *Id.* at 1189.

Most recently, the Washington Supreme Court ruled "that the bar on shackling without an individualized inquiry also applies to nonjury pretrial proceedings." *State v. Jackson*, 467 P.3d 97, 103 (Wash. 2020). The Washington court understood *Deck* as "requir[ing] an individualized determination into whether visible shackles are necessary in the guilt phase of a capital trial." *Id.* But *Deck* did "not hold that there is no need for an individualized inquiry into the use of shackles in pretrial proceedings." *Id.* In Washington State, as in other states, "[a] trial court *must* engage in an individualized inquiry into the use of restraints prior to every court appearance." *Id.* at 103–04.

B. The Second, Eleventh, and Fifth Circuits limit *Deck* to jury proceedings.

In conflict with these decisions, three federal courts of appeals (including the Fifth Circuit in this case) have held that indiscriminate shackling in nonjury proceedings does not violate due process requirements.

In *United States v. Zuber*, 118 F.3d 101, 103 (2d Cir. 1997), a defendant appeared in restraints during his

sentencing hearing at the recommendation of the U.S. Marshals Service. He appealed his conviction to the Second Circuit on three grounds, including a constitutional challenge to his indiscriminate shackling. *Id.* The Second Circuit acknowledged this Court's *Allen* decision, which strongly criticized shackling before a jury, but nevertheless declined to recognize a constitutional limit on shackling in proceedings before a sentencing judge. *Id.* at 103–04. The court reasoned that "juror bias . . . constitutes the paramount concern" animating the rule against indiscriminate shackling, and that "judges, unlike juries, are not prejudiced by impermissible factors." *Id.* The court also downplayed concerns over the decorum of judicial proceedings, reasoning that "it would be impossible to avoid some appearances by defendants in physical restraints since the Marshals Service is responsible in the first instance for deciding how defendants are to be brought into the courtroom." *Id.* at 103 n.2. Ultimately, the panel deferred to the presumed neutrality of the district judge and the assessment of the Marshals, reasoning that when "the court defers without further inquiry to the recommendation of the Marshals Service that a defendant be restrained at sentencing, the court will not permit the presence of the restraints to affect its sentencing decision." *Id.* at 104.

Concurring, Judge Cardamone expressed his view that restraints "detract from the dignity and decorum of court proceedings" and "interfere with the accused's ability to present his case." *Id.* at 106. (Cardamone, J., concurring). Such "concerns are implicated regardless of whether a jury is witness to the physical restraints." *Id.*

In *United States v. LaFond*, 783 F.3d 1216 (11th Cir. 2015), the Eleventh Circuit reached a conclusion similar to the Second Circuit's. As in *Zuber*, the defendant appealed an order requiring that his hands remain shackled during his sentencing hearing. *Id.* at 1225. He argued that indiscriminate shackling, whether before judge or jury, inflicts a dignitary harm and is "inherently prejudicial." *Id.* (internal quotation marks omitted). He also alleged that he was "unable to write during the sentencing hearing" due to his shackling. *Id.* (internal quotation marks omitted).

The Eleventh Circuit, in rejecting defendant's claim, drew from the sources this Court cited in *Deck*. The court quoted Blackstone who, according to the Eleventh Circuit, recognized "a difference . . . between the time of arraignment and the time of trial." *Id.* (quoting 4 William Blackstone, *Commentaries* *3) (internal quotation marks omitted). It also referenced *The Trial of Christopher Layer*, 16 How. St. Tr. 94, 99 (K.B. 1722), which the court read to reaffirm the distinction between jury and nonjury proceedings. *Id.*

III. THE FIFTH CIRCUIT ERRED IN RULING THAT THE CONSTITUTION PERMITS INDISCRIMINATE JUVENILE SHACKLING.

In holding that indiscriminate shackling of children in nonjury hearings comports with the Constitution, the Fifth Circuit reached an incorrect result on an important and recurring issue. The three legal principles that undergird this Court's decision in *Deck* each point to the opposite conclusion: that due process forbids the

indiscriminate shackling of detainees—including and especially juveniles—in nonjury proceedings. And the historical record corroborates this understanding.

A. The Fifth Circuit's decision is inconsistent with *Deck*'s foundational principles.

First, the "presumption of innocence and the related fairness of the factfinding process" plainly is not limited to jury or trial proceedings. 544 U.S. at 630. Absent some showing of a particularized need for shackling, a presumptively innocent detainee has the right to appear as a free person before the judge or jury. Although judges are highly trained, they are also human, "and the sight of a defendant in restraints may unconsciously influence even a judicial factfinder." *Best*, 979 N.E.2d at 1189; s*ee also Henderson*, 915 F.3d at 1136–37 (Hamilton, J., dissenting) ("[W]e defy psychological realities if we insist that the human beings who serve on the bench are immune to such subconscious and subliminal influence from seeing a human being in chains to protect others from him."); Andrew J. Wistrich et al., *Heart Versus Head: Do Judges Follow the Law or Follow Their Feelings?*, 93 Tex. L. Rev. 855, 898 (2015) (surveying over 1,800 state and federal judges and "uncover[ing] clear evidence that emotions influence judges").

The presumption of innocence actually carries more weight in this case than it did in *Deck*. *Deck* considered the constitutionality of shackling during the penalty phase of a capital case, a proceeding at which "the presumption of innocence no longer applie[d]" since the defendant had already been convicted. 544 U.S. at 632. In juvenile proceedings, in contrast, the presumption of innocence

clearly *does* apply. *In re Winship*, 397 U.S. 358, 368 (1970). And, as relevant here, A.S. has never been deemed guilty of an offense—not at his initial hearing nor during any other judicial proceeding.[2]

Second, shackling can impair the accused's ability to communicate with counsel in a pretrial proceeding to the same extent as in a jury trial. The impairment is likely to be particularly significant for juveniles, as even unrestrained juveniles "are less likely than adults to work effectively with their lawyers to aid in their defense." *Graham v. Florida*, 560 U.S. 48, 78 (2010) (noting the impediments to effective communication between juveniles and their counsel).

Third, indiscriminate shackling undermines the dignity and decorum of judicial proceedings. As the Court has explained, "[t]he courtroom's formal dignity, which includes the respectful treatment of defendants, reflects the importance of the matter at issue." *Deck*, 544 U.S. at 631. "And it reflects a seriousness of purpose that helps to explain the judicial system's power to inspire the confidence and to affect the behavior of a general public whose demands for justice our courts seek to serve." *Id.* Defendants have a right to a dignified court process because courts cannot "ignore the way the image of a handcuffed or shackled defendant affects the public perception of that person." *Best*, 979 N.E.2d at 1189.

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[2] In the context of civil litigation that is not subject to the presumption of innocence, courts have nevertheless held that "requiring a party . . . to appear in shackles 'may well deprive him of due process unless the restraints are necessary.'" *Sides v. Cherry*, 609 F.3d 576, 581 (3d Cir. 2019) (quoting *Davidson v. Riley*, 44 F.3d 1118, 1122 (2d Cir. 1995)) (collecting cases).

"The fact that the proceeding is non-jury does not diminish the degradation a prisoner suffers when needlessly paraded about a courtroom, like a dancing bear on a lead, wearing belly chains and manacles." *Zuber*, 118 F.3d at 106 (Cardamone, J., concurring).

The affront to dignity is even more acute in the juvenile context. The objectives of the juvenile delinquency system are to "provide measures of guidance and rehabilitation for the child and protection for society, not to fix criminal responsibility, guilt and punishment." *Kent v. United States*, 383 U.S. 541, 554 (1966). This Court has thus rejected attempts to "remake the juvenile proceeding into a fully adversary process." *McKeiver v. Pennsylvania*, 403 U.S. 528, 545 (1971). It has also noted that "[t]oo often the juvenile court judge falls far short of that stalwart, protective, and communicating figure the system envisaged," and "the fond and idealistic hopes of the juvenile court proponents and early reformers . . . have not been realized." *Id.* at 544–45. A policy to indiscriminately shackle every child who appears before a judge—including seventy-pound ten-year-olds like A.S.—is antithetical to the basic objectives of the juvenile justice system. Such a policy introduces a "tone of criminality," *Tiffany A.*, 59 Cal. Rptr. 3d at 375, and undermines "the idealistic prospect of an intimate, informal protective proceeding" in juvenile court. *McKeiver*, 403 U.S. at 544.

These three legal principles from *Deck* also underscore that the Fifth Circuit's distinction between "an initial detention hearing" and an "adjudicatory hearing" is unavailing. App. 7a–8a. Putting a child in shackles creates "a disheartening suspicion that he is presumed guilty," regardless of whether the shackling

occurs at an initial hearing or a subsequent proceeding. *In re C.B.*, 898 N.E.2d 252, 271 (Ill. App. Ct. 2008) (Appleton, J., dissenting). Children and youth must communicate with counsel during this initial hearing, as in later proceedings. And placing a child in shackles offends the court's formal dignity and decorum, particularly so at an initial hearing, which is likely the first time a child sees the inside of a courtroom.

B. *Deck*'s dictum on nonjury proceedings diverges from the historical record.

Deck's observation, in passing, that a historical rule against shackling did not apply at arraignment or in hearings before a judge does not support a different result. Again, *Deck* arose in the capital sentencing context before a jury. As a result, the Court's observation concerning nonjury proceedings was not a "portion[] of the opinion necessary to that result." *Seminole Tribe of Fla. v. Florida*, 517 U.S. 44, 67 (1996). And here, a "more complete argument demonstrate[s] that the dicta is not correct." *Kirtsaeng v. John Wiley & Sons, Inc.*, 568 U.S. 519, 548 (2013).

Blackstone's *Commentaries* state that a prisoner "is to be called to the bar by his name" and "must be brought to the bar without irons, or any manner of shackles or bonds; unless there be evident danger of an escape." 4 William Blackstone, *Commentaries* *317. That statement does not differentiate jury proceedings from non-jury proceedings.

To be sure, Blackstone drew on the *Trial of Christopher Layer*, who "stood at the bar in chains during the time of his arraignment." *Id.* But as one American

legal commentary observes, "the ruling in that case is at variance with the authority of all the expositors of the common law" because "a distinction was taken between the time of arraignment and time of trial." Francis Wharton, *A Treatise on Criminal Pleading and Practice* 461–62 n.4 (8th ed. 1880). Moreover, a close examination of *Layer's Case* reveals that Layer was in chains because he "had previously attempted to escape." *Sanchez-Gomez*, 859 F.3d at 664. Layer protested that ruling, and presented arguments to a court as to why he should be unshackled. These arguments failed, but the facts that Layer was able to make such a claim, and the court considered and ruled on it, demonstrates that "shackling at arraignment was not a standard practice, or even permissible, absent a demonstrated need." *Id.* In other words, Layer received the process that A.S. now seeks: not a wholesale ban on shackling, but an individualized determination on whether restraints are necessary in a "specific" case. *Holbrook*, 475 U.S. at 569.

Contemporaneous accounts corroborate this understanding. Edward Coke observed that defendants should be brought before the court "out of irons, and all manner of bonds, so that their pain shall not take away any manner or reason, nor them constrain to answer, but at their free will." *Deck*, 544 U.S. at 626 (quoting 3 Edward Coke, *Institutes of the Laws of England* 34 (1797)). William Hawkins, a barrister from the early Nineteenth century, noted that defendants ought to be treated with "humanity and gentleness," and brought to court "under no other terror or uneasiness than what proceeds from a sense of his guilt, and the misfortune of his present circumstances." 2 William Hawkins, *A*

Treatise of the Pleas of the Crown 434 (John Curwood, 8th ed. 1824). Thus, even "at the time of his arraignment,' a defendant "ought not to be brought to the bar in a contumelious manner," such as "with his hands tied together, or any other mark of ignominy and reproach; nor even with fetters on his feet" without a specific showing of need. *Id.* In short, *Deck*'s "passing observation about arraignment was demonstrably wrong." *Henderson*, 915 F.3d at 1138 (Hamilton, J., dissenting).

C. The question presented is important.

The permissibility of indiscriminate shackling in juvenile and other nonjury proceedings plainly is an important and recurring question. Virtually all juvenile cases take place without a jury. *See McKeiver*, 403 U.S. at 545. Among adults, "[n]inety-seven percent of federal convictions and ninety-four percent of state convictions are the result of guilty pleas." *Missouri v. Frye*, 566 U.S. 134, 143 (2012). "[O]urs 'is for the most part a system of pleas, not a system of trials.'" *Id.* (quoting *Lafler v. Cooper*, 566 U.S. 156, 170 (2012)). Indeed, the charges against A.S. were dismissed following his conditional release hearing. Thus, protecting *Deck*'s principles in nonjury settings is of critical importance.

The harms of indiscriminate shackling are especially acute in juvenile proceedings. As this Court has recognized, "youth is more than a chronological fact. It is a time and condition of life when a person may be most susceptible to influence and to psychological damage." *Eddings v. Oklahoma*, 455 U.S. 104, 115 (1982). "[D]evelopments in psychology and brain science

continue to show fundamental differences between juvenile and adult minds," *Graham*, 560 U.S. at 68, and it is essential to consider these differences within the juvenile shackling context. It is well documented that indiscriminate shackling can "exacerbate feelings of isolation, hopelessness, and insecurity" in children, on top of inflicting "needless humiliation and trauma." *In re Jonathon C.B.*, 958 N.E.2d 227, 258 (Ill. 2011) (Freeman, J., dissenting).

The eleven states that continue to permit indiscriminate shackling account for almost 80,000 formal juvenile petitions each year. S. Hockenberry et al., *Easy Access to State and County Juvenile Court Case Counts, 2018* (2023), [https://perma.cc/GU74-37DD]; C. Puzzanchera et al., *Easy Access to Juvenile Court Statistics: 1985–2021* (2023), [https://perma.cc/4HX6-ULNY]. Data is scarce on how often, among these tens of thousands of cases, juveniles are indiscriminately shackled—shackling policies may be locality or even judge-specific. But the Fifth Circuit's decision opens the door for such practices to continue and even proliferate in some states even though they are constitutionally prohibited in others.

On the broader question of indiscriminate shackling in nonjury proceedings, the state of the law has become increasingly thorny. As this Court has noted, constitutional rights "bear the same content when asserted against States as they do when asserted against the federal government." *Ramos v. Louisiana*, 140 S. Ct. 1390, 1397 (2020). Yet in a state such as New York, the highest court of the state has held that indiscriminate shackling outside the jury's presence violates due process,

while the Second Circuit, which includes New York, has reached the opposite result. In this situation, "individual rights and the scope of government power are left to happenstance, calling into question basic expectations of governmental consistency and even-handedness." Wayne A. Logan, *A House Divided: When State and Lower Federal Courts Disagree on Federal Constitutional Rights*, 90 Notre Dame L. Rev. 235, 240 (2014). Accordingly, this Court should resolve, at a minimum, the permissibility of indiscriminate shackling of children in juvenile proceedings. The Court also has an opportunity, though, to rule on the more general application of shackling to nonjury proceedings.

IV. THIS CASE IS A SUITABLE VEHICLE FOR REVIEW.

This case provides an appropriate vehicle for review of the question presented. A.S.'s complaint, brought pursuant to § 1983, asserts that his shackling violated the Fourth Amendment and the Due Process Clause of the Fourteenth Amendment. App. 5a. The district court rejected his argument, ruling that *Deck* is "not applicable" in "judicial settings without a jury," and declining to extend *Deck* to claims in "juvenile court" before a "juvenile judge." App. 18a. The Fifth Circuit agreed, holding that "the prohibition of shackling a defendant before the factfinder have not been extended to proceedings such as what occurred here." App. 7a.

A. A.S. raised, and the courts below rejected, a due process claim.

A.S. did raise a Fourth Amendment challenge to his shackling in the courts below, but that poses no impediment to this Court's review. In his complaint, A.S. alleged that his shackling violated the Due Process Clause of the Fourteenth Amendment as well as the Fourth Amendment. *See* App. 48a–49a, 50a. In his briefs in the district court, A.S. alleged "constitutional violations" arising from his "shackl[ing]" and "handcuff[ing]," App. 17a–18a, and relied on two due process cases, *Deck* and *Youngberg v. Romeo*, 457 U.S. 307 (1982), App. 18a. On appeal, A.S. again relied on due process cases, a point the Fifth Circuit recognized in its opinion. App. 6a–7a. Most importantly, the Fifth Circuit construed A.S.'s constitutional claim as "based on the Fourth and/or Fourteenth Amendment," and decided the case on that basis. App. 5a. Because the Fifth Circuit actually addressed and decided a due process claim, that claim is properly before this Court (and that would be true even if A.S. had not raised a due process claim in the lower courts). *See, e.g., Lebron v. National R.R. Passenger Corp.*, 513 U.S. 374, 379 (1995).[3]

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[3] In *Sanchez-Gomez*, the district court reframed petitioners claim as arising under the Fourth Amendment rather than the Due Process Clause. The Ninth Circuit, in both the panel and en banc opinions, reverted to an analysis under the Due Process Clause, *see* 859 F.3d at 660; *United States v. Sanchez-Gomez*, 798 F.3d 1204, 1207 (9th Cir. 2015), and this Court likewise characterized the issue as a due process question, *see* 584 U.S. at 384.

B. This suit presents no mootness issues.

Likewise, Spencer's decision to bring this case under § 1983 rather than via criminal or postconviction proceedings does not preclude review. Here *Sanchez-Gomez* offers useful guidance.

This Court dismissed petitioners' appeal in *Sanchez-Gomez* because "their underlying criminal cases [had come] to an end." 584 U.S. at 384. But the Court emphasized that such a result should not be taken "to say that those who wish to challenge the use of full physical restraints . . . lack any avenue for relief." To the contrary, the Court noted that there might be "several [other] possible options" available, including the prospect of petitioners "bring[ing] a civil suit." *Id.* (citing Oral Arg. Tr. at 12).

A.S. has pursued precisely that option by filing a civil suit. Because his juvenile proceedings have concluded, A.S. cannot vindicate *Allen* and *Deck*'s constitutional principles through a criminal appeal or postconviction petition. The only remaining path, as *Sanchez-Gomez* notes, is a civil suit, brought through § 1983.

Allowing such suits to proceed is particularly important for juveniles. Many juvenile cases, like A.S.'s, do not result in a sentence such as detention or probation. Even among matters that result in confinement, about two-thirds of juveniles are released within six months. Thalia González, *Youth Incarceration, Health, and Length of Stay*, 45 Fordham Urb. L.J. 45, 76 (2017). Only five percent of youth remain "in placement longer than a year." *Id.* As a result, virtually all juvenile cases end well before a challenge to the juvenile's criminal or quasi-

criminal conviction can work its way through the courts. Civil actions like this one are the most viable means through which juvenile petitioners can challenge their shackling.

C. A recent amendment to the Texas rules does not affect the viability of this action.

Finally, the Texas Supreme Court's recent decision to adopt a rule prohibiting indiscriminate shackling in juvenile proceedings, *see* Tex. R. of Jud. Admin. 17 (2023), does not counsel against certiorari. That is so for three reasons.

First, Rule 17 "implement[s]" Texas law, not federal constitutional law. *See id.* cmt. ("This rule is adopted to implement Texas Government Code section 22.0135(b)"). Second, this action seeks damages to redress a past constitutional violation, and so it is not mooted by a subsequent change in the rules. Third, Texas's rule does not resolve the disagreement among federal courts of appeals and state supreme courts, either on the broader issue of indiscriminate shackling in nonjury proceedings (which Rule 17 does not address) or on the narrower question of juvenile shackling.

As a result of jurisdictional issues, the Court had no chance to resolve these questions in *Sanchez-Gomez*. The disagreement among the lower courts has persistently deepened in subsequent years. Although a large majority of states now prohibit indiscriminate shackling of juveniles, the Fifth Circuit's decision in this case gives fresh impetus to the eleven states that continue to allow the practice. This case presents the Court with an opportunity to resolve a continuing disagreement on an

important and recurring issue by holding that due process bars the indiscriminate shackling of children in nonjury proceedings.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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March 1, 2024

APPENDIX

APPENDIX

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APPENDIX A

United States Court of Appeals
Fifth Circuit
FILED
August 7, 2023
Lyle W. Cayce
Clerk

United States Court of Appeals for the Fifth Circuit

No. 22-40548

ANGELA GERMAINE SPENCER, *by and through next friend and mother of* A.S., *a minor,*

Plaintiff—Appellant,

versus

THE COUNTY OF HARRISON TEXAS,

Defendant—Appellee.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 2:20-CV-37

Before WIENER, SOUTHWICK, and DUNCAN, *Circuit Judges.*

No. 22-40548

PER CURIAM:*

A 10-year-old boy was handcuffed and shackled as he was transported from a detention center to juvenile court. He appeared before the juvenile court judge with leg shackles. He sued the county responsible for his shackling, contending his constitutional rights were violated by the county's policies and practices for juvenile shackling. The district court granted the county's summary judgment motion, ruling the plaintiff failed to provide any authority supporting the claimed violation. We AFFIRM.

FACTUAL AND PROCEDURAL BACKGROUND

A.S. is an African American male who was 10 years old when the events underlying this suit occurred. On April 28, 2017, A.S. was restrained by two staff members at his elementary school. During the incident, A.S. hit and kicked the individuals. On May 10, another incident resulted in A.S.'s biting and scratching two staff members. On that same day, a judge of the Juvenile Court of Harrison County, Texas, issued an order for A.S. to be taken immediately into custody for assault on a public servant. The cited authority was Section 52.01(a)(1) of the Texas Family Code for a violation of Section 22.01 of the Texas Penal Code. Law enforcement officers took A.S. to the Harrison County Juvenile Detention Center, where he

* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

was placed in the custody of the County's Juvenile Probation Department.

Once A.S. was in custody, trained and certified officers conducted the intake process. He was given a medical-health screening, a risk-and-needs assessment, and a mental-health assessment. On the assessment, A.S. scored a two out of five on suicidal ideation. Based on this, he was placed on "cautionary" status where he was observed regularly by detention center staff. During his stay in detention, A.S. did not receive any written reports of incidents or have any instances of behavior warranting disciplinary action.

On May 12, A.S. was scheduled for a hearing in juvenile court, variously referred to as a "release hearing," "pre-determination hearing," and "probable cause hearing." The hearing was within 48 hours of his detention. For his hearing, A.S. was dressed in standard detention clothes and was leg shackled and handcuffed with a "belly belt." He and other juveniles going to court went through the entrance of the Harrison County Sheriff's Office in the basement of the courthouse, and then went up to the first floor through a non-public elevator. In the waiting room outside the juvenile courtroom, his handcuffs and belly belt were removed, but his leg shackles remained. The leg shackles — a restraint approved by the Juvenile Court Judge — were used for all detainees taken to juvenile court. After probation staff ensured there were no adult inmates in the courtroom, A.S. and the other juveniles were taken into the courtroom and seated in the jury box.

A.S. had counsel at his hearing.[1] At the close of the hearing, A.S. was conditionally released to his mother.

On February 14, 2020, A.S., by and through his next of friend and mother, Angela Germaine Spencer, filed a complaint under 42 U.S.C. § 1983 against Harrison County. The county moved for summary judgment on all claims. The magistrate judge entered a Report and Recommendation that summary judgment should be granted. The only claim relevant in this appeal is for the "unnecessary and excessive restraints" during transport and in the courtroom, a claim A.S. asserts based on the Fourth and/or Fourteenth Amendment.[2] The magistrate judge, in a brief explanation, ruled A.S. failed to provide relevant caselaw supporting the claimed violation. Plaintiff filed objections to the magistrate judge's decision. The district court rejected Plaintiff's objections and adopted the Report and Recommendation. A.S. timely appealed.

DISCUSSION

"We review a district court's grant of summary judgment *de novo*, applying the same standard as the district court." *Hicks-Fields v. Harris Cnty.,* 860 F.3d 803, 807–08 (5th Cir. 2017). Summary judgment is proper "if the movant shows that there is no genuine dispute as to

[1] The record does not include a transcript from the hearing, nor do the parties address whether Plaintiff's counsel objected to the shackling or requested that his shackles be removed for the hearing.

[2] Plaintiff's counsel at oral argument conceded that the restraint used on A.S. during transport from the detention center to courthouse is not an issue in this appeal.

any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a).

A county is not subject to vicarious liability in a suit brought under Section 1983; the county must itself have caused the injury. *Hicks-Fields*, 860 F.3d at 808. To establish municipal liability under Section 1983, a plaintiff must show an underlying constitutional violation and also "that (1) an official policy (2) promulgated by the municipal policymaker (3) was the moving force behind the violation of a constitutional right." *Id.* (quotation marks and citation omitted).

The question here is whether A.S.'s constitutional rights were violated when he was shackled without an individualized assessment of need during his initial detention hearing before the juvenile judge.

Plaintiff maintains the "restraint was unnecessary and excessive and thus violated [A.S.'s] rights, pursuant to the Fourth Amendment of the United States Constitution, to be free from unnecessary and excessive restraint and seizure." Underlying this claimed constitutional violation are due process principles that are intertwined with the goals of the juvenile delinquency process. One basis for Plaintiff's claim is a "presumption of innocence in favor of the accused," which "is the undoubted law, axiomatic and elementary, and its enforcement lies at the foundation of the administration of our criminal law." *See Taylor v. Kentucky*, 436 U.S. 478, 483 (1978) (quotation marks and citation omitted). Another basis is the State's "*parens patriae* interest in preserving and promoting the welfare

of the child, which makes a juvenile proceeding fundamentally different from an adult criminal trial." *See Schall v. Martin*, 467 U.S. 253, 263 (1984) (quotation marks and citation omitted). That relationship requires "a balance — to respect the informality and flexibility that characterize juvenile proceedings, and yet to ensure that such proceedings comport with the fundamental fairness demanded by the Due Process Clause." *Id.* at 263 (quotation marks and citations omitted).

Certainly, a defendant's entitlement to a presumption of innocence is a critical component of our criminal justice system. *See Estelle v. Williams*, 425 U.S. 501, 503 (1976). In that light, courts have grappled with the due process concerns of shackling defendants in the courtroom. The Supreme Court has held that "the Fifth and Fourteenth Amendments prohibit the use of physical restraints visible to the jury absent a trial court determination." *Deck v. Missouri*, 544 U.S. 622, 629 (2005). Shackling "'undermines the presumption of innocence and the related fairness of the proceedings,' 'can interfere with a defendant's ability to participate in his own defense,' and affronts the 'dignity and decorum of judicial proceedings that the judge is seeking to uphold.'" *United States v. Banegas*, 600 F.3d 342, 345 (5th Cir. 2010) (quoting *Deck*, 544 U.S. at 630–31).

The concerns precipitating the prohibition of shackling a defendant before the factfinder have not been extended to proceedings such as what occurred here. Plaintiff relies on some opinions from some state courts that analyzed juvenile detainees' rights regarding restraint at the

adjudicatory stage of the juvenile delinquency process. *See, e.g.*, *In re Staley*, 352 N.E.2d 3 (Ill. App. Ct. 1976), *aff'd sub nom. In re Staley*, 364 N.E.2d 72 (Ill. 1977) (reversed and remanded for new adjudicatory hearing when juvenile defendant was shackled during bench trial). Although the opinions Plaintiff cites identified considerations for indiscriminate shackling of juveniles, they lack factual application in this case and, of course, are not controlling on this court.

Although we do not diminish concerns regarding juvenile shackling, authority does not dictate the result Plaintiff seeks. Plaintiff fails to provide authority that recognizes a juvenile's constitutional right not to be shackled without some assessment of necessity during an initial detention hearing before a juvenile judge. We will not create that right.

AFFIRMED.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

A.S. by and through his next friend and mother ANGELA GERMAINE SPENCER, *Plaintiff,*	§ § § § §	
v.	§	Case No. 2:20-CV-00037 JRG-RSP
THE COUNTY OF HARRISON, TEXAS, *Defendant.*	§ § § § §	

ORDER

Defendant Harrison County, Texas previously filed a motion for summary judgment. Dkt. No. 36. Magistrate Judge Payne entered a Report and Recommendation, Dkt. No. 69, recommending that the motion should be granted to dismiss all claims against Harrison County. Plaintiff A.S. has now filed Objections, Dkt. No. 70, with Harrison County filing a Response, Dkt. No. 71.

After conducting a *de novo* review of the briefing on the motion for summary judgment, the Report and Recommendation, and the briefing on plaintiff A.S.'s Objections, the Court agrees with the reasoning provided within the Report and Recommendation and concludes that the Objections fail to show that the Report and Recommendation was erroneous. Consequently, the Court **OVERRULES** Plaintiff A.S.'s Objections and **ADOPTS**

the Report and Recommendation and orders that the motion for summary judgment, Dkt. No. 36, is **GRANTED** and all claims against Harrison County are **DISMISSED**.

So Ordered this
Aug 3, 2022

/s/ Rodney Gilstrap
RODNEY GILSTRAP
UNITED STATES DISTRICT JUDGE

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

A.S. by and through his next friend and mother, ANGELA GERMAINE SPENCER, *Plaintiff,*	§ § § § §	
v.	§	Case No. 2:20-cv-00037-JRG-RSP
THE COUNTY OF HARRISON, TEXAS, *Defendant.*	§ § § § §	

REPORT AND RECOMMENDATION

Before the Court, defendant Harrison County moves for summary judgment against the claims of plaintiff A.S., a minor. Dkt. No. 36. For the following reasons the motion should be **GRANTED**.

I. Background

In the Spring of 2017, A.S. was ten years old, diagnosed with and medicated for Attention-Deficit Hyperactivity Disorder ("ADHD"), and enrolled in the Travis Elementary School in the Marshall Independent School District ("Marshall ISD"). On May 10, 2017, Judge Joe Black issued an Order of Immediate Custody of A.S. for assaulting a teacher. Dkt. Nos. 36-5, 36-6, 36-7. Pursuant to the Order of Immediate Custody, A.S. was detained by

the Marshall ISD Police Department[1] and brought to the Harrison County Juvenile Detention Center. On May 12, 2017, A.S. was presented to Judge Black in juvenile court for a pre-trial detention hearing, and Judge Black ordered the release of A.S. subject to additional conditions not relevant here. Dkt. No. 36-8. Soon after, the attorney representing Marshall ISD informed Angela Spencer, A.S.'s mother, of the school district's decision to drop the charges against A.S. if A.S. was removed from Marshall ISD. Dkt. No. 1 ¶ 100. Angela Spencer agreed to those terms and A.S. was removed from Marshall ISD. *Id.*

On February 14, 2020, A.S. by and through his next friend and mother, Angela Spencer, filed a complaint alleging various constitutional violations pursuant to 42 U.S.C. § 1983 against Harrison County. In the instant motion, Harrison County moves for summary judgment.

II. LEGAL STANDARD

A court "shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." FED.R.CIV.P. 56(a). A dispute of material fact is genuine if the evidence is such that a reasonable jury could return a verdict for the nonmoving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). We consider "all evidence in the light most favorable to the party resisting the motion." *Seacor Holdings, Inc. v. Commonwealth Ins. Co.*, 635 F.3d 680 (5th Cir. 2011)

[1] The record shows that Marshall ISD Police Department is not an office or department of Harrison County, is not under the control of Harrison County, and is not funded by Harrison County.

(internal citations omitted). It is important to note that the standard for summary judgment is two–fold: (1) there is no genuine dispute as to any material fact, and (2) the movant is entitled to judgment as a matter of law.

The movant has the burden of pointing to evidence proving there is no genuine dispute as to any material fact, or the absence of evidence supporting the nonmoving party's case. The burden shifts to the nonmoving party to come forward with evidence that supports the essential elements of his claim. *Liberty Lobby*, 477 U.S. at 250. The nonmoving party must establish the existence of at least a genuine dispute of material fact for trial by showing that the evidence, when viewed in the light most favorable to him, is sufficient to enable a reasonable jury to render a verdict in his favor. *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986); *Duffy v. Leading Edge Products, Inc.*, 44 F.3d 308, 312 (5th Cir. 1995). A party whose claims are challenged by a motion for summary judgment may not rest on the allegations of the complaint and must articulate specific evidence that meets his burden of proof. *Id.* "Conclusory allegations unsupported by concrete and particular facts will not prevent an award of summary judgment." *Duffy*, 44 F.2d at 312 (citing *Liberty Lobby*, 477 U.S. at 247). Further, "a district court may not grant a motion for summary judgment merely because it is unopposed." *Bustos v. Martini Club Inc.*, 599 F.3d 458, 468 (5th Cir. 2010) (citing *Hibernia Nat'l Bank v. Administracion Cent. Sociedad Anonima,* 776 F.2d 1277, 1279 (5th Cir.1985)).

A § 1983 claim has two elements: (1) a violation of constitutional or federally secured rights, and (2) that the violation was committed by a person acting under color of

state law. *Rich v. Palko*, 920 F.3d 288, 294 (5th Cir. 2019) (citing *Brown v. Miller*, 519 F.3d 231, 236 (5th Cir. 2008)). "Although municipalities are 'persons' within the meaning of Section 1983 and can be sued directly, they are not liable on a theory of vicarious liability or *respondeat superior*." *Louisiana Div. Sons of Confederate Veterans v. City of Natchitoches*, 821 F. App'x 317, 319–20 (5th Cir. 2020) (citing *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 690-91 (1978)). At the summary judgment stage, a plaintiff making a direct claim of municipal liability must demonstrate three elements: that (1) an official policy (2) promulgated by the municipal policymaker (3) was the moving force behind the violation of a constitutional right. *Davidson v. City of Stafford, Texas*, 848 F.3d 384, 395 (5th Cir. 2017), *as revised* (Mar. 31, 2017) (citing *Culbertson v. Lykos*, 790 F.3d 608, 628 (5th Cir. 2015)).

III. Analysis

A. Adequacy of Medical and Mental Healthcare

The complaint alleges that it was cruel and unusual punishment for the detention center to not assess A.S.'s mental health with a psychiatrist or medical professional and to not provide A.S. his proscribed ADHD medication. Dkt. No. 1 ¶¶ 2, 3, 89, 91, 94, 127. To survive a motion for summary judgment, a plaintiff claiming cruel and unusual punishment must demonstrate that (1) an excessive risk to the detainee's physical or mental health existed, (2) that an official knew of the excessive risk, and (3) that the official disregarded the excessive risk. *Ball v. LeBlanc*, 792 F.3d 584, 592-'97 (5th Cir. 2015).

Harrison County moves for summary judgment arguing the following: (1) A.S.'s mother intentionally concealed the fact that A.S. was prescribed medication for ADHD because she did not trust the juvenile detention center, Dkt. No. 36-11 at 9:5-19, (2) A.S. informed the center that he had ADHD, Dkt. No. 36-9 at DEF0029, 45, but did not disclose that he was prescribed medication for it, *Id.* at DEF0031, (3) a medical health screen did not indicate the need for additional medical treatment, *Id.*, and (4) a mental health screen indicated a cautionary status for suicidal ideation, which alone was insufficient for additional mental health treatment but for which the detention center took steps to increase its ability to observe A.S., Dkt. Nos. 36-9 at DEF0033-44, 36-3. A.S.'s opposition to Harrison County's motion for summary judgment does not oppose these facts, and therefor we accept them as true.

Based upon these facts, officials at the juvenile detention center did not know A.S. required prescription ADHD medication. Even if we assume without deciding that withholding ADHD medication equates to an excessive risk to A.S.'s mental health, an official's failure to alleviate a risk that was not perceived does not amount to a punishment. *Farmer v. Brennan*, 511 U.S. 825, 838 (1994) ("[A]n official's failure to alleviate a significant risk that he should have perceived but did not, while no cause for commendation, cannot under our cases be condemned as the infliction of punishment.").

B. Shackling

The complaint alleges that constitutional violations occurred when A.S. was shackled during transport from

the detention center to juvenile court and handcuffed when presented to the juvenile judge. Harrison County moves for summary judgment arguing that case law does not support A.S.'s claims. In response, A.S. provides two cases, neither of which support A.S.'s claimed constitutional violation.

First A.S. cites *Youngberg v. Romeo* for the proposition that there is a general right to be free from government restraint. 457 U.S. 307, 316-19 (1982). However, in the section following that cited by A.S., the Supreme Court declared that such a right is "not absolute" against legitimate interests of the state. *Id.* at 320. Here, there is a legitimate interest in seeing to the safe transportation of detainees between the detention center and the juvenile court. A.S. also cited to *Deck v. Missouri* for the proposition that prejudice results from restraints in court. 544 U.S. 622, 629-30. However, *Deck* stands for a more limited proposition: prejudice resulting from restraints before a *jury*. *Id* [sic] at 626 ("Blackstone and other English authorities recognized that the rule did not apply at 'the time of arraignment,' or like proceedings before the judge. It was meant to protect defendants appearing at trial before a jury.") (citations omitted). In judicial settings without a jury, such as A.S.'s appearance before Judge Black in juvenile court, *Deck* is not applicable.

C. Temporary Pre-Adjudication Detention

The complaint alleges constitutional violations arising from the temporary pre-adjudication detention of a juvenile. Harrison County moves for summary judgment arguing that any liberty interest of A.S. that was infringed

upon by pre-adjudication detention is outweighed by legitimate state objectives to prevent pretrial crime. See *Schall v. Martin*, 467 U.S. 253, 263-'74 (1984) (finding that pretrial detention under the New York Family Court Act, purportedly designed to protect the child and society from the potential consequences of his criminal acts, comports with the fundamental fairness standard demanded by the Due Process Clause of the Fourteenth Amendment). A.S. does not oppose this argument, and the Court finds it persuasive.

To the extent the complaint alleges that temporary pre-adjudication detention of a juvenile is cruel and unusual punishment, similar logic applies.

> "if a particular condition or restriction of pretrial detention is reasonably related to a legitimate governmental objective, it does not, without more, amount to "punishment." Conversely, if a restriction or condition is not reasonably related to a legitimate goal-if it is arbitrary or purposeless-a court permissibly may infer that the purpose of the governmental action is punishment that may not constitutionally be inflicted upon detainees *qua* detainees."

Bell v. Wolfish, 441 U.S. 520, 539 (1979); see also *Schall*, 467 U.S. 269-72 (applying *Bell* to detention provisions of New York Family Court Act). A.S. does not argue that juvenile pre-adjudication detention is arbitrary or purposeless, and Harrison County argues persuasively that the prevention of pretrial crime is a legitimate state objection justifying pre-adjudication detention.

D. Detention with Older Juveniles

The complaint alleges constitutional violations arising from housing A.S. with older juveniles. Harrison County argues that A.S. cannot demonstrate how joint housing with older juveniles infringes upon A.S.'s constitutional rights. In opposition, A.S. does not respond to the argument. The analysis above applies here with equal force. To the extent that the complaint may allege that housing with older juveniles deprived A.S. of any liberty interest or due process rights or resulted in cruel and unusual punishment, the government has a legitimate interest that stems from the management of juvenile facilities. See *Bell*, 441 U.S. at 540 ("The Government also has legitimate interests that stem from its need to manage the facility in which the individual is detained.").

E. Race and Disability Based Discrimination

The complaint alleges discrimination based on race and disability in violation of the Equal Protections Clause of the Fourteenth Amendment, the American with Disabilities Act, and the Rehabilitation Act. Harrison County argues for summary judgment because, among other reasons, A.S. does not demonstrate or present evidence to show he was adversely treated because of his race or his disability. A.S.'s response limits the inquiry by claiming disability discrimination by virtue of restraints placed upon A.S. during transportation and court proceedings. However, the response does not provide any evidence showing that A.S. was adversely treated because of his disability. Such a showing is necessary to succeed. See, *e.g.*, *Davidson v. Texas Department of Criminal Justice*, 91 Fed.Appx (5th Cir. 2004) (affirming dismissal

of ADA lawsuit where plaintiff failed to show he was adversely treated because of his handicap).

F. *Miranda* Rights

The complaint alleges that no one informed A.S. of his rights under *Miranda v. Arizona*, 384 U. S. [sic] 436 (1966). Harrison County's motion for summary judgement [sic] and A.S.'s opposition briefings on this issue are misplaced as of the Supreme Court's decision recently issued in *Vega v. Tekoh*, 597 U.S. ---, No. 21-499, slip op. 16 (June 23, 2022), which held that *Miranda* does not provide a basis for a §1983 claim. In any event, A.S. has not shown that he was subjected to custodial interrogation or that any statement was used against him in any way.

G. Factually Meritless Claims

The complaint alleges that A.S. was subjected to a cavity search, was not timely presented before a judge for adjudication, and was not appointed counsel. Harrison County moves for summary judgment against these claims on the basis that they are factually meritless, that A.S. was never subjected to a cavity search, was presented to Judge Black for a pre-trial detention hearing in according with Texas law and within forty-eight hours of being detained, and was appointed counsel for the hearing. A.S. does not controvert these facts, and as a result the claims should be dismissed as factually meritless.

H. Failure to Train

The complaint also alleges that Harrison County failed to properly train officials to address A.S.'s disability. Any failure to train argument must show that such failure was the "moving force of the constitutional violation." *Monell*,

436 U.S. at 694. However, A.S. has not demonstrated that any constitutional or federal violation has occurred.

IV. CONCLUSION

For the reasons discussed above, it is RECOMMENDED that Harrison County's motion for summary judgment, Dkt. No. 36, should be **GRANTED** and all claims against Harrison County should be **DISMISSED**.

A party's failure to file written objections to the findings, conclusions and recommendations contained in this report within 14 days bars that party from *de novo* review by the District Judge of those findings, conclusions, and recommendations and, except on grounds of plain error, from appellate review of unobjected-to factual findings and legal conclusions accepted and adopted by the district court. Fed. R. Civ. P. 72(b)(2); *see also Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1428–29 (5th Cir. 1996) (*en banc*). Any objection to this Report and Recommendation must be filed in ECF under the event "Objection to Report and Recommendation [cv, respoth]" or it may not be considered by the District Judge.

SIGNED this 27th day of June, 2022.

/s/ Roy S. Payne
ROY S. PAYNE
UNITED STATES MAGISTRATE JUDGE

APPENDIX D

United States Court of Appeals for the Fifth Circuit

No. 22-40548

ANGELA GERMAINE SPENCER, *by and through next friend and mother of* A.S. *a minor,*

Plaintiff—Appellant,

versus

THE COUNTY OF HARRISON TEXAS,

Defendant—Appellee.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 2:20-CV-37

ON PETITION FOR REHEARING EN BANC

Before WIENER, SOUTHWICK, and DUNCAN, *Circuit Judges*.

PER CURIAM:

Treating the petition for rehearing en banc as a petition for panel rehearing (5TH CIR. R. 35 I.O.P.), the petition for panel rehearing is DENIED. Because no member of the panel or judge in regular active service

requested that the court be polled on rehearing en banc (FED. R. APP. P. 35 AND 5TH CIR. R. 35), the petition for rehearing en banc is DENIED.

APPENDIX E

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

A.S. by and through his next friend and mother, ANGELA GERMAINE SPENCER, *Plaintiffs,*	§	
v.	§	CIVIL ACTION
THE COUNTY OF HARRISON, TEXAS, *Defendant.*	§	NO.: 2:20-cv-37

FIRST ORIGINAL COMPLAINT

NOW COMES A.S. by and through his next friend and mother, Angela Germaine Spencer, (collectively termed "Plaintiffs" or "A.S." herein) and files this their *First Original Complaint* alleging that the County of Harrison in Marshall, Texas (hereinafter referred to as "the County") by and through their Juvenile Justice Department or the Willoughby Juvenile Center ("the Juvenile Department) otherwise termed "Defendant" herein, violated the various rights of A.S. as more specifically pled herein. A.S. reserves the right to re-plead this *Complaint* if new claims and issues arise upon further development of the facts, as permitted by law. In support thereof, A.S. would respectfully show this tribunal the following:

I. BRIEF INTRODUCTION TO THE CASE

1. In the educational world, it's called the *Schoolhouse to Jailhouse Pipeline*. It is the unspoken conspiracy among school district officials to move a child they do not like, or find bothersome, out of the classroom and into a prison cell. The practice is simple, time-tested and true. A staff member purposefully provokes a child, gets the child to react and better yet, overreact, and then when the child requires some type of physical intervention, the inevitable happens. In trying to protect themselves from assault, the child touches, pushes, or even hits the teacher. Once that happens, the plan is fulfilled and the student is charged with assault on a public servant, a felony. The police are called, the child arrested, brought to juvenile detention center and charged. If the District is really lucky, so they think, the offense is sufficiently severe or reoccurring, that the child is removed from the school permanently. That is exactly what happened to A.S. then barely ten years old who was handcuffed with his hands behind his back and put in a police car and brought to the Harrison County Juvenile Detention Center.

2. This "Schoolhouse to Jailhouse" conspiracy is particularly troublesome because it disproportionately affects African-American children and children with emotional disabilities. A.S. is both. More importantly, and germane to this case, the jailhouse that A.S. was brought to wasn't equipped to deal with his unique and individualized needs. Again, he was barely ten years old at the time. Frankly he never should have been

brought there in the first instance, but he was. Even so, he should he should have been processed and sent home. He was not. In fact he never saw a Magistrate or was given notice of his rights. In addition, he should have seen a physician or medical professional to assess his medical needs. That never happened though he did get a cavity search. He should have seen a psychiatrist or medical professional to assess his mental health and psycho-pharmacological needs but that didn't happen either. While he was at the Detention Center A.S. was never provided the medication that was prescribed for him by his psychiatrist. When it was finally time to go to Court three days later, he was wearing a blue-jump suit, sandals that were way to big, both his hands and feet were cuffed, and all shackled together, frankly akin to a little run-a-way slave. At the Courthouse he walked through the same area as adult criminals. The Judge admonished mother, telling her to be sure to give A.S. his medications and let him go home.

3. Bases [sic] upon this attack upon his civil rights and dignity A.S. brings forth this complaint based upon violation of his rights pursuant to the United States Constitution as to 4th Amendment to free from excessive and unnecessary seizure and force; the 8th Amendment to be free from cruel and unusual punishment; the Due Process Clause of the 14th Amendment for failure to have been correctly Magistrated, appointed an attorney, for not receiving necessary medical and mental health care and the Equal Protection Clause of the 14th Amendment as to any and all of the above. All these claims are brought pursuant to 42 U.S.C. §1983. In addition, A.S. has

statutory claims pursuant to *Section 504 of the Rehabilitation Act of 1973*, 29 U.S.C. §794 ("Rehab Act" or "Section 504") and the *Americans with Disabilities Act* ("ADA"), 42 U.S.C., §12101, et seq. for claims related to discrimination based upon disability. In addition, he also pursues claims related to discrimination based upon race, pursuant to Title VI of the Civil Rights Acts of 1964 codified at 42 U.S.C. §2000d et seq.

II. JURISDICTION

4. Jurisdiction is conferred upon this Court pursuant to 28 U.S.C.A. §§ 1331 and 1343 because the matters in controversy arise under the United States Constitution and laws of the United States.

III. VENUE

5. Under 28 U.S.C. §1391, venue is proper before this Court because the events and omissions giving rise to the Plaintiffs claims occurred in the Eastern District of Texas, Marshall Division.

IV. PARTIES

6. A.S. lives in Texas and at all times pertinent to this case he lived within the Marshall County, Texas with his mother Angela Germaine Spencer ("Ms. Spencer"). They currently live in Tyler, Texas.

7. The Willoughby Juvenile Center may be found at 1401 Warren Drive, Marshall, Texas 75672. It is a division within the Calhoun County Government and is the local agency responsible for oversight, rule making, compliance with state and federal law, and control of

the provision of juvenile services for the County. They may be served by and through the County Attorney, the Honorable Chad Simms, Calhoun County Courthouse, #1 Peter Whitestone Square, Room 414, Marshall, Texas 75760, (903) 935-8401 [Telephone], (903) 935-4853 [Facsimile] or any other person duely [sic] delegated to accept or waive service, or both.

V. STATEMENT OF FACTS

A. ABOUT A.S.

8. A.S. was born on December 15, 2006. He is currently 13 years old. He has seen a psychiatrist and is prescribed medication for having Attention-Deficit Hyperactivity Disorder.

9. A.S. is now in the seventh grade. He previously attended Travis Elementary School in the Marshall Independent School District. Currently, he attends Owens Elementary School in the Tyler Independent School District.

10. A.S. is very active in community sports, like football and basketball. In fact, he plays with the AAU basketball program. He also participates in a traveling team. He also plays organized football and recently won most valuable defensive player of the year.

11. He also does acting and modeling with Casting360, a company that seeks to connect available talent and talent scouts in various parts of the country, including Dallas, Texas where A.S. participates.

12. At church, A.S. performs in mimes and participates in other youth activities, including church camping trips.

13. Outside of school, A.S. thrives as an independent person. He never has a problem requiring significant intervention by an adult, let alone the need for physical restraint, as frequently occurred at school.

B. ABOUT THE MARSHALL INDEPENDENT SCHOOL DISTRICT

14. Marshall Independent School District serves about 5,500 students in Marshall, Texas. The School District was founded in 1898.

15. According to the MISD website, their Mission is "to improve outcomes for all students by providing leadership, guidance and support to school."[1]

16. Additionally, "Marshall Independent School District envisions that each learner is equipped to successfully achieve his or her vision and be a productive, contributing citizen in a global society."

17. According to the District's website, the ethnic demographic makeup of the Marshall ISD is approximately just above 37% African American, 36% Hispanic, 23% Caucasian, and 1% Asian – with 3% of all students identifying as two or more races.

18. The ethnic demographic makeup Hopewell Middle School is approximately just above 39% Caucasian, 20% Hispanic, 1% Asian, and 36% African-American – with 4% of all students identifying as two or more races. Per the District's website, almost 70% of the

[1] http://www.marshallisd.com/marshall_independent_school_district/about_misd

students who attend the school are economically disadvantaged.[2]

19. For the 2016- 2017 School Year the Marshall ISD[3] reported to the Texas Education Agency ("TEA") that they had approximately 5,894 students, of which there had been 161 students removed to a *Disciplinary Alternative Education Placement* ("DAEP"), Ninety (90) students had mandatory removals and ninety (90) students had discretionary DAEP removals.

20. In further breakdown by race, there were 1,265 White students, which was 23.26 percent of the total number of students in Marshall ISD. In comparison, there were 2,015 Black students, which was 37.05 percent of the total number of students in Marshall ISD.

21. When looking at the racial breakdown of the total number of DAEP actions, 35 actions were taken against White students and 110 actions were taken against Black students. Thus, 2.76 percent of White students had DAEP actions taken against them while 5.46 percent of Black students has DAEP actions taken against them.

22. Additionally, when looking at the breakdown of special education students placed in DAEP, 43 special education students were placed in DAEP, while 157 non-special education students were placed in DAEP.

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[2] A student is defined as "economically disadvantaged" if he or she is eligible for free or reduced-price lunch or other public assistance. /cgi/sas/broker

[3] https://rptsvr1.tea.texas.gov/cgi/sas/broker

23. Finally, when looking at the number of DAEP actions taken against economically disadvantaged students, actions were taken against 286 economically disadvantaged students compared to DAEP actions taken against 28 economically disadvantaged students.

24. When analyzing the total number discipline actions taken in Marshall ISD in the 2016-2017 school year compared to the racial makeup of the actions, Black students were disproportionately reprimanded at a higher rate than their White peers, as were children with disabilities.

25. Upon reason and belief Plaintiffs allege that disproportionately more African-American children are placed in the local Juvenile Detention Center than children who identify as Caucasian.

C. THE USE OF SCHOOL RESOURCE OFFICERS ("SRO's) [sic]

26. The School Resource Officer program in the United States is over sixty years old, but the program did not gain prominence until the 1990s in response to various school shootings.

27. According to national data, SRO's can be found in approximately 35 percent of schools across America. They can be found at each school level (elementary, middle, and high schools), and they can be found in both suburban and metropolitan areas. Further, they are found in the schools regardless of enrollment size. In fact, most are embedded within a school to assist school administration with anything that would involve

a criminal law component, such as the presence of a firearm on campus.

28. At many schools, an SRO's role is clearly defined and the officer only engages students as part of a community policing project; they do not interfere or have any role with administrative discipline.

29. However, in other schools, SRO's are expected to directly assist with student discipline.

D. LAWFUL USE OF RESTRAINTS AND ARRESTS

30. At public schools in Texas, federal law clearly lays out the framework for lawful restraints and arrests. The Texas Education Code states that "it is the policy of the state to treat with dignity and respect all students, in regard to the use of restraints. *See* Chapter 29, Subchapter A.

31. Per Marshall ISD's own policies and procedures a "restraint" means the use of physical force or a mechanical device to significantly restrict the free movement of all or a portion of the student's body. It may only be used in an emergency which is a situation in where a student's behavior poses a threat of imminent, serious physical harm to the student or others; or imminent, serious property destruction. It must be limited to the use of reasonable force and be discontinued at the point at which the emergency no longer exists.

32. Importantly, school employees must be trained in the use of restraint. If any personnel are called upon to use a restraint *in an emergency* and is not trained, they must receive training within 30 school days following

the use of the restraint. Training should include prevention and de-escalation techniques. In short, the restraint should be a last resort, not the first option. Restraints must be documented, that is a written documentation, and parents must be notified when a restraint is used against their child.

E. COMPLAINT HISTORY – THE 2015-2016 SCHOOL YEAR

33. During the 2015-2016 school year, A.S. and his mother were homeless. In October 2015, they applied for the District's assistance under the McKinney-Vento Homeless Assistance Act, 42 U.S.C. §11301 *et seq.*

34. On the application, Ms. Spencer indicated that she and A.S. were living with a friend. Ms. Spencer was aware of the criminal liability for falsifying information, and willingly signed the required document to enroll A.S. in the Marshall Independent School District.

35. Once a person signs the McKinney-Vento application, the School District is required to take it at face value. In fact, under this Act it is illegal for a School District to stalk the homeless, or retaliate against them for using the Act or act in anyway [sic] to thwart the student's admission. Nevertheless, staff from the School District did all three.

36. Over the course of the ensuing period, District staff would follow Ms. Spencer to and from work, her father's home and her residence, all with the intent to harass and interview neighbors to undermine her representation she was homeless.

37. Krystal Moody, director of Human Resources at Wiley College, Ms. Spencer's place of employment, even wrote a letter to the District confirming that Ms. Spencer indeed lived in Marshall, Texas.

38. Nevertheless, in a letter dated February 25, 2016, David Segers, the District's Truancy Facilitator, informed Ms. Spencer that MISD believed they had enough evidence to remove A.S. from the MISD.

39. Ms. Spencer appealed and filled out another application indicating an address in the District where she and A.S. temporarily lived.

40. The School District again threatened to remove A.S. from the MISD.

41. Ms. Spencer then filed a complaint with the federal government alleging that the School District failed to follow the requisites of the *McKinney-Vento Homeless Assistance Act* ("The Act"), 42 U.S.C. §11301 *et seq.* After filing that complaint, the retaliation against A.S. slowly began.

42. During the Spring of 2016, A.S. continued to receive special education services for his emotional condition and behavioral issues. A.S.'s mother learned that A.S. was being restrained often multiple times throughout the day, and often day after day.

43. Ms. Lewis sought and received legal services to address their concerns. Specifically, she was concerned about the District's violation of A.S.'s rights pursuant to the *Individuals with Disabilities Education Act* ("IDEA"), 20 U.S.C. §1401 et seq., and also the McKinney-Vento Act.

44. At the end of the spring semester for 2016, in order to address mother's complaints, the parties met in a mediation and settled their concern about the McKinney Vento Act and allegations of violations of IDEA. Through settlement the parties agreed to set up a plan to address A.S.'s needs in his Special Education Program, particularly regarding the use and over-use of restraints.

F. THE 2016-2017 SCHOOL YEAR: THE INCIDENT AND FOLLOWING RETALIATION

45. Despite the agreement reached at the end of the Spring 2016 semester, Marshall ISD staff continued to use and overuse restraints on A.S., without following state law. In fact, A.S. was restrained close to 200 times during the 2016-2017 school year.

46. On or about September 9, 2016, A.S. and a teacher had physical contact. As a result, and not surprisingly, he was placed in *Disciplinary Alternative Education Placement* ("DAEP").

47. A.S.'s mother filed another complaint, this time with the Texas Education Agency ("TEA"), alleging that A.S.'s rights were being violated by his placement in DAEP. The complaint was ignored.

48. About a month later, the DAEP Principal Barron, restrained A.S.

49. That afternoon, A.S. came home from school with bruises under his eye and marks on his neck. He told his mother they occurred when he was restrained by Mr. Barron.

50. A.S. told his mother that in addition to restraints, Principal Barron blew in his face, taunted him, and laughed in his face. Ms. Spencer complained to Mrs. Fessler, the Principal of Travis Elementary School but she did not respond or attempt to address these concerns either.

51. A.S. also told his mother that Principal Barron put his knee into A.S.'s stomach during a restraint. Mr. Barron is well over 6 feet and 300 pounds. At the time, A.S. was 9 years old, about 4 feet 3 inches tall and weighed between 65-70 pounds. His mother complained to Mrs. Fessler about these issues as well. Fessler did not respond to or address these concerns, either.

52. In fact, A.S. was being restrained everyday at DAEP. Additionally, DAEP staff would often call A.S.'s mother to take him out of school when they refused to take care of him.

53. While A.S. was being restrained and also when he was taken out of school, he did not receive educational services. Ms. Spencer complained to both Mrs. Fessler and Ms. Perkins, but they did not respond to these complaints either.

54. On December 15, 2016, A.S. turned 10 years old.

55. About a month later, A.S. began having problems with the DAEP teacher, Mr. Gray.

56. One day, Mr. Gray performed a full body hold restraint on A.S.. [sic] During this restraint, A.S. became bloody and was sent home.

57. When he got home, A.S. told his mother that Mr. Gray *always* lays on him when restraining him. His mother complained to Mrs. Fessler. She did not respond to this complaint either.

58. On or about January 15, 2017, Principal Fessler received an email noting that DAEP staff were repeatedly making comments stating that A.S. will be in "Kids Jail" by his birthday[4]. This reflects the mind set of staff more intent on steering A.S. into the criminal justice system, rather than away from it, as any good teacher should. A.S. was now very purposefully well into the "schoolhouse to jailhouse pipeline."

59. When A.S.'s mother complained to Principal Fessler, Mrs. Fessler indicated that there would be an investigation into the mentioned above. However, Ms. Spencer never received any results from the alleged investigation and believes there never was one.

60. Unfettered, DAEP's staff continued to overuse restraints. At the end of the month, Ms. Spencer received another notice that A.S. was restrained.

61. At the beginning of the next month, Ms. Spencer let the District know that A.S. was being represented by counsel to help investigate her complaints about the overuse of restraints.

62. Additionally, A.S.'s mother filed another complaint with School District Officials about the comments that

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[4] Plaintiffs reasonably believe that staff knew that in Texas, a child cannot be held responsible for criminal activities until they are 10 years old. Texas Family Code ____. [sic]

staff were steering her son to the juvenile system, but she never received a response.

63. As A.S. was being manhandled by staff on almost a daily basis, his classmates soon became equally emboldened and started bullying him also. Ms. Spencer complained to Mrs. Fessler, about the bullying, but she did not respond to this complaint either.

64. At the end of March, the TEA completed their investigation into A.S.'s placement in DAEP. They found that MISD did not afford A.S. all of his procedural rights when they placed him in DAEP. Further, the District did not ensure that all the staff restraining A.S. were trained in the use of restraint in accordance with Texas regulatory law.

65. Not surprisingly, this report led to even more retaliation from Marshall ISD. Someone reported Ms. Spencer to Child Protective Services ("CPS") alleging that she neglected her son's medical needs. Ms. Spencer was able to show CPS the complaints were unfounded. She was told the complaint came from a staff member at the Defendant School District, more retaliation.

66. After the TEA report was released, A.S. experienced even more bullying from his peers. On one occasion, he was kicked by another student in his self-contained classroom, and the staff did nothing to prevent the incident.

67. Another time a student threw glass at him. Staff did nothing to prevent this incident either.

68. Ms. Spencer was not informed of this bullying, nor was there any explanation given to the numerous injuries A.S. came home with. Mrs. Spencer complained that A.S. was not being kept safe, which was a common pattern, District staff failed to investigate her concerns.

69. During the first week of May 2017, A.S. was again bullied and harassed by a classmate. When A.S. told his mother what happened, he begged her not to tell anyone at the School District because he was afraid that "things will get worse" for him.

70. A few days later, Ms. Spencer sent an email to Ms. Perkins about the bullying and harassment. She received no response.

71. While the bullying persisted, A.S. also continued to be restrained by staff on almost a daily basis. On May 10, he was restrained for more than an hour, in violation of state law.

72. The School District's reports and records reflect that each time A.S. was restrained, the restraint, on average, lasted thirty minutes to an hour. Sometimes he was restrained even longer, and on multiple occasions, he was restrained multiple times a day, all in violation of state law.

73. Ms. Spencer retained an Educational Advocate during this period on A.S.'s behalf. On May 10th, the advocate went to the School to check upon A.S.'s welfare.

74. After the Advocate left, District staff retaliated.

75. While A.S. was in class, he started throwing a pencil. He was not throwing the pencil at anybody and the pencil did not hit anybody.

76. Nevertheless, and even though there was no imminent threat of injury to anyone or property, Mr. Gray provided the usual and customary intervention for A.S., and restrained him with a full body restraint.

77. A.S. was on his back, and tried to free himself from Gray, but he could not as Gray was significantly heavier than A.S. and his weight was hurting him.

78. A.S. tried to get released from Gray more and more teachers came into the room to also hold A.S. down.

79. In his efforts to free himself, A.S. apparently hit Mr. Gray.

80. At this point, staff found their excuse to rid themselves of A.S. and his mother, he had hit a staff member, considered an *Assault On A Public Servant*, a felony. A staff member in the classroom pounced on the opportunity and unnecessarily called the SRO to have A.S. arrested.

G. A.S [sic] IS INCARCERATED

81. When the SRO came into the room, A.S. was handcuffed, putting his hands behind his back.

82. There were two SRO's, who carried A.S. to their police car.

83. A.S. cried out "let me go", but one SRO replied back, mockingly, "no".

84. The SRO put A.S. in the backseat of the police car.

85. They did not place him in a seatbelt, leaving A.S. free to bang around in the back, while he driven to the Juvenile Detention Center. It was a Wednesday.

86. Upon entry he did not see a Magistrate.

87. He was never read his rights.

88. He was never provided an attorney.

89. He never saw a physician or medical professional to assess his medical needs.

90. A.S. did receive a cavity search.

91. He never saw a psychiatrist or medical professional to assess his mental health and psycho-pharmacological needs.

92. He never saw a teacher.

93. He never saw a Counselor.

94. A.S. was never provided the medication that was prescribed for him by his psychiatrist.

95. He stayed at the facility until Friday. When it was finally time to go to Court three days later, he was wearing a blue-jump suit, sandals that were way to [sic] big, both his hands and feet were cuffed, and all shackled together, akin to a little run-a-way slave.

96. At the Courthouse he walked through the same area as adult criminals.

97. The Judge admonished mother, telling her to be sure to give A.S. his medications and let him go home.

98. A.S. was sent to the Juvenile Detention Center on felony charges of Assault on a Public Servant. At that time he 10 years old, and was in the same center where teenagers up to 17 years old are held. He was kept in detention for a couple of days with these young men.

99. At the hearing the Judge admonished mother, making sure she have continued to give A.S. his prescribed medications.

100. Soon after, the County Attorney sent Ms. Spencer a letter to inform her that School District officials would drop the charges if A.S. was removed from the Marshall ISD. Ms. Spencer agreed to those terms and A.S. transferred from Marshall ISD to Tyler ISD.

101. The retaliation had worked, A.S. and his mother were gone.

G. [sic] THE 2017-2018 SCHOOL YEAR

102. During the 2017-2018 school year, A.S. was transferred to the Tyler Independent School District.

103. At Tyler ISD, administrators, teachers and staff had to work hard with A.S. to undo bad behaviors he brought from Marshall ISD, and they helped him build up self-esteem and trust.

104. The hard work paid off. In addition to his community activities, A.S.'s academic achievements at Tyler ISD far exceed his experience at Marshall ISD. His grades are all passing, and for several six weeks he

made the A and B honor roll. He also did well on the reading and math STAAR test.

105. A.S.'s successes at Tyler ISD show that he can thrive in a school environment just like he thrives in non-educational settings. The failures and omissions of Marshall ISD prevented A.S from thriving like he is clearly able to. His placement in the Juvenile Detention was unnecessary.

106. He never should have been taken there.

107. He never should have been admitted.

108. Even if admitted, if had been seen by any licensed professional, psychiatrist, physician, physician's assistant or aide, nurse, social worker or teacher upon intake or in a timely manner, he would have discharged home, because it was obvious he never should have been there, and they could not meet his needs.

109. For these reasons, Plaintiffs make the following claims against Harrison County Juvenile Justice Department.

VI. STATE ACTION

110. Plaintiffs incorporate by reference all the above-related paragraphs with the same force and effect as if herein set forth. In addition, each following paragraph and section, incorporates by reference as if fully set forth herein, the one above it.

111. The County Defendant was at all times and in all matters acting under color of state law when they

permitted A.S. to be subjected to the wrongs and injuries set forth herein.

VII. UNCONSTITUTIONAL POLICIES, PROCEDURES, PRACTICES & CUSTOMS

112. Plaintiffs incorporate by reference al [sic] the above related paragraphs, as well as those below, with the same force and effect as if herein set forth.

113. Plaintiffs contend that the County Defendant had a policy, procedure, practice and custom to not provide appropriate medical and mental health care to minors, nor have them seen by a Magistrate in a timely manner, and incarcerating children of a tender age unnecessarily, and as such violated A.S.'s rights pursuant to the Fourteenth Amendment of the Constitution of the United States for which Plaintiffs seek recovery pursuant to 42 U.S.C. §1983.

114. These policies and procedures were based upon well-developed and settled federal caselaw, federal rules, directives from federal executive agencies like the *Office of Civil Rights* with the United States Department of Education, directives from the National and Texas Association of School Boards, Texas Law, Texas Rules and Ethical Standards for correctional professionals.

115. Plaintiffs contend that the County Defendant failed to sufficiently train staff in addressing the needs of A.S., a person with a disability, thereby violating his rights pursuant to the Fourteenth Amendment of the Constitution of the United States for which A.S. seeks recovery pursuant to 42 U.S.C. §1983.

116. Plaintiffs contend that Defendants failed to sufficiently supervise staff in addressing the needs of a person with a disability, like A.S., thereby violating his rights pursuant to the Fourteenth Amendment of the Constitution of the United States for which A.S. seeks recovery pursuant to 42 U.S.C. §1983.

117. During the relevant time period contemplated by this cause of action, the County of Harrison, had an actual policy, practice and custom of conscious and deliberate indifference to federal law, federal and state administrative directives, and Juvenile Justice Board policies and procedures in regard to the treatment of A.S., and such failures were a moving force in the injuries to A.S. for which A.S. seeks recovery pursuant to 42 U.S.C. §1983.

VIII. CONSTITUTIONAL CLAIMS

A. VIOLATIONS OF THE FOURTH AMENDMENT

118. Plaintiffs contend that the acts and omissions of this Defendant violated the rights of A.S. pursuant to the Fourth Amendment of the Constitution of the United States for which Plaintiffs seek recovery pursuant to 42 U.S.C. §1983.

119. The restraint and shackling of A.S. and force used against him by Defendant was unreasonable.

120. The restraint and shackling of A.S. and force used against him by Defendant was unnecessary.

121. Th [sic] restraint and shackling of A.S. and force used against him by Defendant was excessive.

122. As such, all these acts by Defendant violated the rights of A.S, pursuant to the Fourth Amendment of the Constitution of the United States for which Plaintiffs seek recovery pursuant to 42 U.S.C. §1983.

B. VIOLATIONS OF THE FOURTH AMENDMENT

123. Plaintiffs contend that the acts and omissions of this Defendant violated the rights of A.S. pursuant to the Eighth Amendment of the Constitution of the United States for which Plaintiffs seek recovery pursuant to 42 U.S.C. §1983.

124. The incarceration of A.S. was cruel and unusual.

125. The shackling of A.S. like a run-away slave was cruel and unusual.

126. Placing A.S. who was ten years old at the time with young men was cruel and unusual.

127. Not providing A.S. necessary medical and mental health care was cruel and unusual.

128. As such, all these acts and omissions by Defendant violated the rights of A.S. pursuant to the Eight Amendment of the Constitution of the United States for which Plaintiffs seek recovery pursuant to 42 U.S.C. §1983.

C. EQUAL PROTECTION CLAUSE OF THE 14th AMENDMENT

129. The acts and omissions of the Defendant singularly discriminated against A.S. when treating him in a disparate manner based upon race as compared to

other Caucasian students similarly situated, thereby violating his rights pursuant to the *Equal Protection Clause* of the Fourteenth Amendment, for which Plaintiffs seek recovery pursuant to 42 U.S.C. §1983 and 1988.

130. The acts and omissions of Defendant singularly discriminated against A.S. when treating him in a disparate manner based upon his disabilities, as compared to his non-disabled peers, thereby violating his rights pursuant to the *Equal Protection Clause* of the Fourteenth Amendment, for which Plaintiffs seek recovery pursuant to 42 U.S.C. §1983 and 1988.

D. DUE PROCESS CLAUSE OF THE 14th AMENDMENT

131. A.S. has a constitutional right, pursuant to the Due Prices [sic] Clause of the 14th Amendment to the United States Constitution, to be free from physical abuse, unnecessary and excessive restraint and shacking by Defendant.

132. Moreover, A.S. never saw a Magistrate, never had his rights read to him nor was given an attorney violating his rights under the 14th Amendment.

133. As such he seeks recovery pursuant to 43 U.S.C. §1983.

IX. CLAIMS PURSUANT TO THE REHABILITATION ACT

134. Plaintiffs incorporate by reference all the above-related paragraphs with the same force and effect as if herein set forth.

135. A.S. is "an individual with a disability" pursuant to Section 504 and its implementing regulations and directives.

136. The County of Harrison receives federal funds and thus follows the requisites of Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §794.

137. The implemented regulations of Section 504 require that each state that receives disbursements, including the state's political subdivisions such as its Juvenile Justice Division, must ensure that all juvenile with a disability within its control, be given appropriate and necessary accommodations, pursuant to federal law and rules. To the degree that a policy or practice hinders honest consideration of a disabled student's unique and individualized needs, and fails to accommodate that child's disability and keep them safe, it violates Section 504.

138. Plaintiffs further assert that because the Defendant failed to provide A.S. a safe and non-hostile alternative environment to a Detention Center, such failures as noted above, have together and separately, contributed to violating his rights pursuant to Section 504, and the federal rules and regulations promulgated pursuant thereto.

139. In addition and in the alternative, the failures denoted herein by the School District to provide him a psychiatric assessment or access to his psychotropic medications equally caused A.S. to be a victim of intentional discrimination based upon disability by the School District.

140. A.S. was also a victim of disparate impact under Section 504, by the acts and omissions by the Defendant.

141. Lastly, the acts and omissions of the Defendant violated the regulations promulgated under Section 504 and as such create a private cause of action for its violations thereby.

142. Such failures proximately caused injury to A.S.

X. CLAIMS PURSUANT TO THE AMERICANS WITH DISABILITIES ACT

143. Plaintiffs incorporate by reference all the above-related paragraphs with the same force and effect as if herein set forth.

144. In addition and in the alternative to the above, the facts as previously described demonstrate violations of the *Americans with Disabilities Act*, 42 U.S.C. §12131, et seq ("ADA").

145. A.S. is a "qualified individual with a disability" as defined in 42 U.S.C. §12131(2).

146. The Harrison County Juvenile Justice Program and Detention Center, is a "public entity" as defined in 42 U.S.C. §12131(1), and receives federal financial

assistance so as to be covered by the mandate of the ADA.

147. The Defendant and its programs and facilities and their operation constitutes a program and services for ADA purposes.

148. Specifically, and separate and apart from his Section 504 cause of action, A.S. alleges that the Defendant failed and refused to reasonably accommodate and modify services as to him, in violation of Title II of the ADA.

149. Such failures proximately caused injuries to A.S.

XI. TITLE VI CLAIMS

150. Plaintiffs incorporate by reference all the above-related paragraphs with the same force and effect as if herein set forth.

151. Title VI of the Civil Rights Act of 1964, codified at 42 U.S.C. §2000d et seq, and its implementing regulations, require that each state that receives disbursements, including the state's political subdivisions, not permit a student to be a victim of discrimination based upon race or racial stereotypes.

152. Plaintiffs assert that Defendant because the District knew that A.S. was African-American it had a duty to prevent a ten-year old child who had in fact, broken no law, from being another statistic, and such failures as noted herein, have together and separated, contributed to violating his civil rights pursuant to Title VI. Specifically, African American children are more likely to be incarcerated and placed in a

disciplinary detention setting than Caucasian children by the Defendant.

XII. RATIFICATION AND RESPONDEAT SUPERIOR

153. Plaintiffs incorporate by reference all the above-related paragraphs with the same force and effect as if herein set forth.

154. The Defendant ratified the acts, omissions and customs of all its administrators, personnel and staff.

155. As a result, the Defendant is responsible for the acts and omissions of all administrators, personnel and staff.

XIII. PROXIMATE CAUSE

156. Plaintiffs incorporate by reference all the above related paragraphs with the same force and effect as if herein set forth.

157. Each and every, all and singular of the foregoing acts and omissions, on the part of the Defendant, taken separately and/or collectively, jointly and severally, constitute a direct and proximate cause of the injuries and damages set forth herein.

XIV. DAMAGES

158. Plaintiffs incorporate by reference all the above-related paragraphs with the same force and effect as if herein set forth.

159. As a direct and proximate result of the Defendant's conduct, A.S. has suffered injuries and damages, for

which he is entitled to recover herein including but not limited to:

a. Physical pain in the past;

b. Physical pain in the future;

c. Loss of educational opportunities in the past;

d. Loss of educational opportunities in the future;

e. Medical expenses in the past;

f. Medical expenses in the future;

g. Mental anguish in the past;

h. Mental anguish in the future;

i. Mental health expenses in the past;

j. Mental health expenses in the future;

k. Stigma in the past;

l. Stigma in the future;

m. Physical impairment in the past; and

n. Various out-of-pocket expenses incurred by his family but for the acts and omissions of the School District.

XV. ATTORNEYS FEES

160. Plaintiffs incorporate by reference all of the above related paragraphs, as if fully set forth herein.

161. It was necessary for Plaintiffs to retain the undersigned attorneys to file this lawsuit. Upon judgment, Plaintiffs are entitled to an award of attorney fees and costs pursuant to Section 504, the

ADA, Title VI, 42 U.S.C. §1983, and 42 U.S.C. §2000d et seq.

XVI. DEMAND FOR A JURY TRIAL

162. Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiffs demand a jury trial for all issues in this matter.

XVII. PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray in the manner and particulars noted above, and that Defendant be required to fully compensate by an amount sufficient to fully compensate him for the elements of damages enumerated above, judgment for damages, recovery of attorney's fees and costs for the preparation and trial of this cause of action, and for its appeal if required, pursuant to Section 504, the ADA, Title VI, §1983, and 42 U.S.C. §2000d et seq., together with pre- and post-judgment interest, and court costs expended herein and for such other further relief as the Court may deem just and proper in law or in equity.

Respectfully submitted,

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